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14 UNITED STATES DISTRICT COURT
15 DISTRICT OF ARIZONA

16 Kenneth Kottwitz, II and Ruben Perez on)
17 behalf of themselves and all others)
18 similarly situated,)

19 Plaintiffs,)

20 v.)

21 Linda Blessing, Interim Director of the)
22 Arizona Department of Economic Security,)

23 Defendant.)

No.

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

24 **PRELIMINARY STATEMENT**

25 1. This case is brought on behalf of Plaintiffs and a class of Arizona residents
26 who have applied for unemployment insurance benefits through the state unemployment
27 insurance program but have not received a timely determination of eligibility and/or
28 issuance of their unemployment insurance benefits to which they are entitled.

29 2. In Arizona, the Arizona Department of Economic Security is responsible
30 for processing applications for the unemployment insurance program. The program has
31 specific time frames established by federal law in which applications must be processed,

1 determinations on eligibility must be made and first time payments for benefits must be
2 paid.

3 3. Plaintiffs challenge the Defendant's failure to issue first time payments
4 within 14 days of the end of the application week or waiting period, and to make non-
5 monetary separation and non-separation determinations within 21 days of the initial date
6 of application or date the issue arose as required by federal law.

7 4. As a result of Defendant's delays in processing unemployment insurance
8 applications and providing benefits, individuals and families are going without
9 desperately needed benefits. Without these benefits, eligible persons may go hungry, are
10 at risk of homelessness and their health and safety may be put at risk.

11 5. The number of persons seeking and qualifying for unemployment insurance
12 benefits has substantially increased over the last year. However, Defendant has failed to
13 keep pace with the increase in applications and, as a result, increasing numbers of eligible
14 individuals are faced with substantial delays in receiving their unemployment insurance
15 benefits or a determination on their claims.

16 6. Plaintiffs seek declaratory and injunctive relief to enjoin Defendant from
17 failing to make unemployment insurance eligibility determinations and to provide
18 unemployment insurance payments to eligible applicants within the time frames required
19 by federal law.

20 **JURISDICTION AND VENUE**

21 7. This action arises under the federal Social Security Act and 42 U.S.C.
22 § 1983. The Court has jurisdiction pursuant to the following statutes:

23 a. 28 U.S.C. § 1331, which gives district courts original jurisdiction
24 over all civil actions arising under the Constitution, laws, or treaties
25 of the United States.

26 b. 28 U.S.C. §§ 1343(a)(4), which give district courts original
27 jurisdiction over suits to redress the deprivation under state law of
28

1 any rights, privileges, or immunities guaranteed by the Constitution
2 or by acts of Congress.

3 8. Plaintiffs' action for declaratory, injunctive, and other appropriate relief is
4 authorized by 28 U.S.C. §§ 1651, 2201, and 2202.

5 9. Venue is proper under 28 U.S.C. §§ 1391(b) and 1391(e).

6 **PARTIES**

7 10. Plaintiff Kenneth Kottwitz, II is a 41 year-old male living in Phoenix,
8 Arizona.

9 11. Plaintiff Ruben Perez is a 36 year-old male living in San Luis, Arizona with
10 his wife and three children.

11 12. Defendant Linda Blessing is the Interim Director of the Arizona
12 Department of Economic Security and, as such, has the responsibility to administer the
13 Unemployment Insurance Program consistent with the federal Social Security Act.

14 **CLASS ALLEGATIONS**

15 13. Plaintiffs bring this suit both individually and on behalf of a statewide class
16 of persons similarly situated pursuant to Fed. R. Civ. P. 23(a) and (b)(2). The class is
17 composed of all residents of Arizona who have or will submit an application for
18 unemployment insurance benefits and whose application has not been or will not be
19 processed timely by Defendant.

20 14. The prerequisites of Fed. R. Civ. P. 23(a) are met in that:

21 a. The class is so numerous that joining all members is impracticable.

22 The exact size of the class is unknown but includes thousands of
23 persons residing in Arizona. The class members are geographically
24 dispersed, have limited financial resources, and are unlikely to
25 institute individual actions;

26 b. There are issues of fact and law as to the adequacy of the
27 Defendant's policies and laws that are common to all members of
28 the class;

1 c. The claims of the named Plaintiffs are typical of the claims of the
2 class they represent; and

3 d. Plaintiffs and their counsel will fairly and adequately protect the
4 interests of the class.

5 15. The requisites of Fed. R. Civ. P. 23(b) are met in that the Defendant has
6 acted or refused to act on grounds generally applicable to all members of the class,
7 making final declaratory and injunctive relief appropriate with respect to the class as a
8 whole.

9 **STATUTORY AND REGULATORY FRAMEWORK**

10 **The Unemployment Insurance Program**

11 16. Congress established the federal-state cooperative, state-administered
12 unemployment insurance program to provide a substitute for wages lost during a period
13 of unemployment to workers who lost their employment through no fault of their own.
14 The purpose of the program was to provide prompt replacement of wages to stabilize the
15 economic purchasing power of the workers until they found employment so they would
16 not have to resort to public welfare programs. H.R. Rep. No. 615, 74th Cong., 1st Sess., 7
17 (1935).

18 17. The federal government provides funds to the states for the operation and
19 administration of the unemployment insurance program. 42 U.S.C. § 1101.

20 18. The Department of Economic Security (“DES”) serves as the state agency
21 responsible for administering the unemployment insurance program in Arizona. A.R.S. §
22 23-601 *et seq.*; Arizona Administrative Code (“Ariz. Admin. Code”) R6-3-1301 *et seq.*

23 19. To be eligible for unemployment insurance benefits, in general, a person
24 must have lost his or her job through no fault of their own.

25 **Application Processing**

26 20. Under the federal Social Security Act, states must have “methods of
27 administration ... to insure full payment of unemployment compensation **when due.**” 42
28 U.S.C. § 503 (a)(i) (emphasis added).

1 time payments, within the federal requirements means that eligible individuals and
2 families are going or may go without the resources they need to maintain their homes,
3 health and welfare.

4 27. Plaintiff Kenneth Kottwitz, II applied for unemployment insurance on
5 about December 27, 2008, after he was laid off from his job as a wood worker. As of the
6 filing of this lawsuit, Defendant Blessing has not made a written decision on his
7 application and has not issued him an unemployment insurance check.

8 28. Because he did not receive his unemployment insurance benefits, Plaintiff
9 Kottwitz, II could not pay his rent and had to move out of his apartment. He had no
10 money, no place to go, and he had to sleep on the streets. In mid-January 2009, he
11 moved into a homeless shelter in Phoenix, Arizona. He lost all his personal property
12 except what fit in two suitcases. Plaintiff Kottwitz, II fears for his safety at the shelter
13 and is depressed about his circumstances. He wants to leave the shelter but he cannot
14 afford to leave the shelter until he receives his unemployment checks.

15 29. Plaintiff Ruben Perez lives in San Luis, Arizona. He applied for
16 unemployment insurance benefits on about December 26, 2008, after he was laid off
17 from his job of four years as a mechanic. As of the filing of this lawsuit, Defendant
18 Blessing has not issued a written decision on his application or issued him a check.

19 30. Because he has not received any unemployment benefits, Plaintiff Perez
20 has used up almost all his savings to support his wife and three children. His savings will
21 be gone shortly and he fears he will not be able to provide the basic necessities for his
22 family. He is very stressed and angry about his circumstances.

23 31. Although 10 weeks have passed since the applications were filed,
24 Defendant Blessing has not provided Plaintiffs with a determination on their
25 unemployment insurance applications. She has failed to provide Plaintiffs with a notice
26 of their appeal rights so Plaintiffs would know they could appeal the delay in processing
27 their claims, the failure to act on their applications, or their right to benefits. With no first
28 payment and no decision, Plaintiffs are stuck in an administrative “black hole.”

1 503(a)(1).

2 38. Defendant Blessing's actions, as described herein, are enforceable by
3 Plaintiffs in this Court pursuant to 28 U.S.C. § 1331 and pursuant to 42 U.S.C. § 1983.

4 39. Plaintiffs are suffering or are in danger of suffering irreparable harm.
5 Plaintiffs have no adequate remedy at law.

6 **SECOND CLAIM FOR RELIEF**

7 (Defendant's Violation of U.S. Constitution, Social Security Act)

8 40. Plaintiffs restate and incorporate by reference each of the allegations
9 contained in paragraphs 1 through 39, above.

10 41. Defendant Blessing's failure to process applications and make eligibility
11 determinations and first time payments for unemployment insurance benefits within the
12 time periods required by federal law operates to deny assistance to eligible persons
13 without due process of law in violation of the Due Process Clause of the U.S.
14 Constitution, U.S. Const. Amend. XIV, which is enforceable by Plaintiffs in this Court
15 pursuant to 28 U.S.C. § 1331 and pursuant to 42 U.S.C. § 1983.

16 42. Plaintiffs are suffering or are in danger of suffering irreparable harm.
17 Plaintiffs have no adequate remedy at law.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs respectfully ask that this Court:

20 A. Certify this case as a class action.

21 B. Issue a declaratory judgment holding that Defendant Blessing has
22 violated and continues to violate the Social Security Act, 42 U.S.C.
23 § 503(a)(i), implementing regulations and policy requirements by
24 not processing unemployment insurance applications timely and
25 failing to make non-monetary eligibility separation and non-
26 separation determinations and issue first time payments timely.

27 C. Grant preliminary and permanent injunctions that prohibit Defendant
28 Blessing from failing to process unemployment insurance

